

Application No. 10/057,809
Amendment Dated January 12, 2006
Reply to Office Action Dated August 26, 2005

Remarks

Claims 18-31 are pending.

Claims 18-31 stand rejected.

Claims 18-31 are submitted herein for review.

No new matter has been added.

Applicant notes that a telephonic interview was conducted with supervising Examiner Maung on January 11, 2006 to address rejections issued in the present Office Action, the details of which are discussed below.

In the Office Action, the Examiner has issued a 35 U.S.C. § 101 double patenting rejection. Applicant notes that such a statutory double patenting rejection can not be overcome by terminal disclaimer. However, Applicant notes that the independent claims 18 and 25 of the present invention are not in fact identical to the claims contained in the prior patent, U.S. Patent No. 6,466,677.

For example, claims 1 of the '677 patent recites that the limitation "...memory slot positioned on said headband..." However claim 18 of the present invention recites the limitation "memory slot positioned on said *headphone*." Similarly, the processor is also recited as being on the headband in claim 1 of the '677 patent but is on the headphone in claim 18 of the present

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invention. Similar differences are displayed between independent claim 8 of the '677 patent and independent claim 25 of the present application. Such differences were noted on page 6 of the prior Amendment entered on September 13, 2005.

A call was placed to Examiner Perez, but a message informed us that she would not be back in the office until later in February 2006. As such, a call was placed to supervisor Nay Maung on January 11, 2006. During a conversation between Mr. Maung and the undersigned, the supervising Examiner indicated that the appropriate rejection in this case could have been an *obviousness type double patenting* and not a statutory type recited by the Examiner. As such, Applicant requests that the rejection be changed to the judicially created non-statutory type double patenting rejection and that the Terminal Disclaimer submitted herewith be entered to obviate that rejection.

On a separate note, Applicant, in the previous Amendment, recited on page 7,

“Applicant further notes that the Eastman and Nishiguchi references have been previously cited, but fail to teach or suggest, either alone or in combination, the features claimed in the present invention.”

This statement is withdrawn by the Applicant. It appears that Nishiguchi reference (U.S. Patent No. 6,695,477) was confused with the Nakamichi reference (U.S. Patent No. 5,077,712) previously cited in the '677 patent. Applicant hereby corrects the record and notes that Nishiguchi was first cited by the Examiner in this application in the Office Action dated June 9, 2004.

In view of the forgoing, Applicant respectfully submits that pending claims 18-31 are in

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condition for allowance, the earliest possible notice of which is earnestly solicited. If the Examiner feels that an interview would facilitate the prosecution of this Application they are invited to contact the undersigned at the number listed below.

Respectfully submitted,

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By



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